

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COMP
EDWARD M. BERNSTEIN, ESQ.
Nevada Bar #1642
PATTI S. WISE, ESQ.
Nevada Bar #5624
EDWARD M. BERNSTEIN & ASSOCIATES
500 South Fourth Street
Las Vegas, Nevada 89101
Telephone: (702) 384-4000
Facsimile: (702) 385-4640
Attorneys for Plaintiffs

FILED

FEB 29 5 05 PM '08

CR. [Signature]
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

DAVID TRAMMELL and MELISSA)
TRAMMELL, individually and on)
Behalf of All Others Similarly)
Situated,)

Plaintiffs)

vs.)

ENDOSCOPY CENTER OF SOUTHERN)
NEVADA LLC; ENDOSCOPY CENTER)
OF SOUTHERN NEVADA II LLC;)
CLIFFORD CARROL, M.D.;)
GASTROENTEROLOGY CENTER OF)
NEVADA LLP (DESAI); DIPAK DESAI,)
M.D.; VISHVINDER SHARMA, M.D.;)
ELADIO CARRERA, M.D.; FRANK)
FARISMO, M.D.; DOES 1 through 75; and)
ROE CORPORATIONS 76-99, Inclusive,)

Defendants.)

CASE NO.:
DEPT. NO. A 558227

COMPLAINT VI

JURY TRIAL
REQUESTED

ARBITRATION
EXEMPTION CLAIMED:
Class Action; Damages in
Excess of \$40,000.

COME NOW Plaintiffs, DAVID TRAMMELL and MELISSA TRAMMELL,
on behalf of themselves and all others similarly situated, by and through their
counsel, Edward M. Bernstein & Associates, and hereby complain and allege

1 against ENDOSCOPY CENTER OF SOUTHERN NEVADA; ENDOSCOPY CENTER OF
2 SOUTHERN NEVADA II; CLIFFORD CARROL, M.D.; DIPAK DESAI, M.D.;
3 VISHVINDER SHARMA, M.D.; ELADIO CARRERA, M.D.; FRANK FARISMO, M.D.;
4 DOES 1 through 75; and ROES 76-99:
5

6 **I. PARTIES AND JURISDICTION**

7 1. Plaintiffs DAVID TRAMMELL and MELISSA TRAMMELL are individuals and
8 citizens of the State of Nevada.

9 2. Plaintiffs bring this action as a class action to recover damages, restitution and
10 equitable relief, as applicable, on the several causes of action set forth hereafter on their behalf
11 and on behalf of the class against the Defendants named herein.

12 3. Plaintiffs are informed and believe, and thereon allege, that at all
13 times herein mentioned, Defendant, ENDOSCOPY CENTER OF SOUTHERN
14 NEVADA, a Nevada Limited Liability Company; ENDOSCOPY CENTER OF
15 SOUTHERN NEVADA II, a Nevada Limited Liability Company (hereinafter
16 collectively referred to as "ENDOSCOPY CENTER"); GASTROENTEROLOGY
17 CENTER OF NEVADA LLP (DESAI) (hereinafter referred to as
18 "GASTROENTEROLOGY CENTER") and DOES 1-75 and/or ROE
19 CORPORATIONS 76-99, inclusive, and each of them, were and now are
20 corporations duly authorized and licensed and doing business in Clark County,
21 Nevada and was and is in the business of provided medical care and is subject to
22 the requirement of federal and state law. The exact form of business organization
23 under which said Defendants, and each of them, were and are organized and doing
24 business is unknown to the Plaintiffs at the time of the filing if this Complaint and
25
26
27
28

1 Plaintiffs will ask leave of Court to amend this Complaint when the same shall
2 have been ascertained.

3 4. Plaintiffs are informed and believe, and thereon, allege, that at all
4 times herein mentioned, ENDOSCOPY CENTER and/or GASTROENTEROLOGY
5 CENTER was operated and managed by Defendants CLIFFORD CARROL, M.D.
6 (hereinafter "CARROL"), DIPAK DESAI, M.D. (hereinafter "DESAI"),
7 VISHVINDER SHARMA, M.D. (hereinafter "SHARMA"), ELADIO CARRERA,
8 M.D. (hereinafter "CARRERA"), and FRANK FARISMO, M.D. (hereinafter
9 "FARISMO").
10

11 5. Plaintiffs are informed and believe, and thereon allege that
12 Defendants, DOES 1-75, and/or ROE CORPORATIONS 76-99, inclusive, and each
13 of them were and now are owners, operators and managing agents of ENDOSCOPY
14 CENTER and/or GASTROENTEROLOGY CENTER such that they controlled the
15 budget for ENDOSCOPY CENTER and/or GASTROENTEROLOGY CENTER
16 which impacted patient care, collected accounts receivables, prepared audited
17 financial statements, contracted with various vendors for services and provided
18 direct oversight for ENDOSCOPY CENTER and/or GASTROENTEROLOGY
19 CENTER in terms of financial and patient care responsibility. Plaintiffs will ask
20 leave of Court to amend this Complaint to show such true names and capacities of
21 such Defendants when the names of such Defendants have been ascertained.
22 Plaintiffs are informed and believe and thereon allege that each of the Defendants
23 designated herein as a DOE is responsible in some manner and liable herein by
24 reason of negligence and other actionable conduct and by such conduct,
25
26
27
28

1 proximately caused the injuries and damages to Plaintiffs as hereinafter further
2 alleged.

3 6. Plaintiffs are informed and believe, and thereon allege, that at all
4 times herein mentioned, Defendants, and each of them, were the agents, servants,
5 employees and partner of their Co-Defendants, and each of them, and, as such,
6 were acting within the course and scope of such agency and employment. Each and
7 every Defendant as aforesaid, when acting as a principal, was negligent in the
8 selection, hiring, training and/or supervision of each and every other Defendant, as
9 its agent, servant, employee and partner.
10

11 7. All of the facts, acts, omissions, events and circumstances herein
12 mentioned and described occurred in the County of Clark, State of Nevada, and the
13 Defendants, and each of them, are residents of the County of Clark, State of
14 Nevada, and/or have their principal place of business in said County and State,
15 and/or are legally doing business in said County and State.
16

17 8. Each Defendant, whether named or designated as a DOE and/or ROE
18 Corporation, was the agent, servant and/or employee of each of the remaining
19 Defendants. Each Defendant acted within the course and scope of said agency,
20 employment and service with the permission, consent and ratification of each of his
21 Co-Defendants in performing the acts hereinafter alleged, with specificity, that
22 gave rise to Plaintiffs' injuries.
23

24 9. This Court has jurisdiction in this matter and this venue is proper because this
25 action relates to and arises out of a product supplied and used in Clark County, Nevada.
26
27
28

1 21. The Class, of which Plaintiff DAVID TRAMMELL is a member, is represented
2 by Plaintiff DAVID TRAMMELL and consists of all parties who were exposed or potentially
3 exposed to contaminated syringes and/or contaminated vials previously used for unknown
4 persons at the ENDOSCOPY CENTER and/or GASTROENTEROLOGY CENTER during the
5 time period March 2004 through January 11, 2008.
6

7 22. Plaintiff DAVID TRAMMELL is informed and believes and thereupon alleges
8 that the mechanism of exposure for each class member is materially identical.

9 23. Numerosity: The members of The Class are estimated by Health Officials to be
10 40,000 and so numerous that joinder is impracticable. The exact number of the members of the
11 class is unknown to Plaintiff DAVID TRAMMELL at this time, but may be determined from
12 records maintained by Defendants.
13

14 24. Plaintiff MELISSA TRAMMELL bring this class action on behalf of herself and
15 on behalf of all other persons who had physical contact with individuals that were treated with
16 contaminated syringes and/or contaminated vials and/or contaminated colonoscopy equipment
17 previously used for unknown persons at the ENDOSCOPY CENTER and/or
18 GASTROENTEROLOGY CENTER during the time period March 2004 through January 11,
19 2008. (Hereinafter referred to as "the Sub-Class").
20

21 25. The Sub-Class, of which Plaintiff MELISSA TRAMMELL is a member, is
22 represented by Plaintiff MELISSA TRAMMELL and consists of all parties who were exposed or
23 potentially exposed to contaminated syringes and/or contaminated vials and/or contaminated
24 colonoscopy equipment previously used for unknown persons at the ENDOSCOPY CENTER
25 and/or GASTROENTEROLOGY CENTER during the time period March 2004 through January
26 11, 2008.
27
28

1 26. Plaintiff MELISSA TRAMMELL is informed and believes and thereupon alleges
2 that the mechanism of exposure for each class member is materially identical.

3 27. Numerosity: As the members of The Class are estimated by Health Officials to be
4 40,000, members of the Sub-Class are likely to be equal or greater to the number of members of
5 The Class and so numerous that joinder is impracticable. The exact number of the members of
6 the class is unknown to Plaintiff MELISSA TRAMMELL at this time, but may be determined as
7 investigation and discovery continues.
8

9 28. Commonality: There are common questions of law and fact in this action that
10 relate to and affect the rights of each member of the Class and the Sub-Class and the relief
11 sought herein.

12 29. The questions of law and fact common to all members of the Class and Sub-Class
13 predominate over any questions affecting only individual members, and the class action is
14 superior to other available methods for the fair and efficient adjudication of this controversy.
15

16 30. The questions of law or fact common to the Class and the Sub-Class, and which
17 predominate this action, include but are not limited to the following:

- 18 a. Whether Defendants had a common practice during the time periods March 2004
19 through January 11, 2008, to re-use syringes (“contaminated syringe”) for persons
20 receiving needle injections;
21
22 b. Whether a “contaminated syringe” is a defective product;
23
24 c. Whether Defendants distributed “contaminated syringes”;
25
26 d. Whether Defendants had a common practice during the time periods March 2004
27 through January 11, 2008, to re-use vials (“contaminated vials”) for persons
28 receiving needle injections;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- e. Whether a “contaminated vial” is a defective product;
- f. Whether Defendants distributed “contaminated vials”;
- g. Whether Defendants had a common practice during the time periods March 2004 through January 11, 2008 to use colonoscopy equipment (“contaminated colonoscopy equipment”) that was not properly cleaned prior to their re-use on persons receiving colonoscopies;
- h. Whether “contaminated colonoscopy equipment” is a defective product;
- i. Whether Defendants used “contaminated colonoscopy equipment”;
- j. Whether Defendants were negligent in using “contaminated syringes” and “contaminated vials” and “contaminated colonoscopy equipment” on members of the Class;
- k. Whether Defendants expressly warranted that they would use clean syringes and clean vials and clean colonoscopy equipment on members of the Class;
- l. Whether Defendants were negligent in conducting quality control or safety inspections prior to distributing and using “contaminated syringes” and “contaminated vials” and “contaminated colonoscopy equipment”;
- m. Whether Defendants’ wrongful conduct proximately caused injury, loss or damages;
- n. Whether exposure to “contaminated syringes” and “contaminated vials” and “contaminated colonoscopy equipment” created an increased risk of serious health problems to members of the Class;
- o. Whether contact with members of the Class created an increased risk of serious health problems to members of the Sub-Class;

1 p. Whether an increased risk of serious health problems in members of the Class and
2 members of the Sub-Class mandates periodic medical examination for early
3 detection of potential health problems related to Hepatitis and/or HIV.

4 31. Typicality: The claims of Plaintiff DAVID TRAMMELL are typical of the
5 claims of the Class, in that the claims of all members of the Class, including Plaintiff DAVID
6 TRAMMELL, arise from materially identical exposure to contaminated syringes and/or
7 contaminated vials and/or contaminated colonoscopy equipment and depend upon a showing of
8 the same acts and omissions of defendants giving rise to the right of Plaintiff DAVID
9 TRAMMELL to the relief sought herein.
10

11 32. The claims of Plaintiff MELISSA TRAMMELL are typical of the claims of the
12 Sub-Class, in that the claims of all members of the Sub-Class, including Plaintiff MELISSA
13 TRAMMELL, arise from materially identical exposure to individuals that were exposed to
14 contaminated syringes and/or contaminated vials and/or contaminated colonoscopy equipment
15 and depend upon a showing of the same acts and omissions of defendants giving rise to the right
16 of Plaintiff MELISSA TRAMMELL to the relief sought herein.
17

18 33. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class
19 and of the Sub-Class. Plaintiffs' claims are coextensive with, and no antagonistic to, the claims
20 of the other members of the Class and the Sub-Class. Plaintiff is willing and able to vigorously
21 prosecute this action on behalf of the Class and Sub-Class, and Plaintiff has retained competent
22 counsel experienced in litigation of this nature.
23

24 34. This action is properly maintained as a class action under NRCP 23(b)(2)
25 inasmuch as the defendants have acted or refused to act, as herein more specifically alleged, on
26 grounds which are applicable to the Class and Sub-Class and have, by reason of such conduct,
27
28

1 made final relief appropriate with respect to the entire Class and Sub-Class, as sought in this
2 action.

3 IV.

4 FIRST CAUSE OF ACTION

5 (Products Liability)

6
7 35. Plaintiffs repeat, reallege, and incorporate herein by reference all prior paragraphs
8 as though fully set forth herein.

9 36. At all times relevant herein, Defendants operated an endoscopy center.

10 37. Defendants engaged in the business of marketing, distributing, selling and using
11 produce such as the syringe and vials used in medical procedures.

12 38. At all times herein relevant, Defendant owed a duty of reasonable care to
13 Plaintiffs in the marketing, distributing, selling, and use of the syringes and vials and
14 contaminated colonoscopy equipment.

15 39. Defendant breached this duty by their actions which include but are not limited to
16 the following:

- 17
- 18 a. Failing to adequately and properly supply sufficient syringes to preclude the need
19 to re-use syringes;
 - 20 b. Failing to adequately and properly inspect syringes to ensure that syringes were
21 not re-used;
 - 22 c. Failing to maintain the syringe in such a way it would not come into contact with
23 contaminants;
 - 24 d. Failing to adequately and properly supply sufficient vials to preclude the need to
25 re-use vials;
 - 26
 - 27